

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 3RD DAY OF MARCH 2023 / 12TH PHALGUNA, 1944

CRL.MC NO. 854 OF 2023

CRIME NO.31/2022 OF GURUVAYOOR POLICE STATION, THRISSUR
AGAINST CRL.M.P. 3394/2022 IN C.C. 1104/2022 OF JUDICIAL
MAGISTRATE OF FIRST CLASS, CHAVAKKAD

PETITIONER/ACCUSED:

RENJITH
AGED 42 YEARS, S/O RAGHAVAN,
ARAKKAL HOUSE,
TRINITY CONVENT ROAD, KOLAZHY PO,
THRISSUR DISTRICT, PIN - 680010
BY ADVS.
SRI.RAJIT
SRI.RAMAKRISHNAN M.N.

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM PIN - 682031

BY SMT.SREEJA V., PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 23.02.2023, THE COURT ON 03.03.2023 PASSED THE
FOLLOWING:

“C.R.”

BECHU KURIAN THOMAS, J.

Crl.M.C No.854 of 2023

Dated this the 3rd day of March, 2023

ORDER

Should the bail granted in one crime be cancelled merely because the accused had, in alleged violation of the conditions of bail, got himself entangled in a subsequent crime? The above question arises for resolution in the instant case.

2. Petitioner is an accused in C.C. No.1104 of 2022 on the files of the Judicial First Class Magistrate's Court, Chavakkad, which arises from Crime No.31 of 2022 of Guruvayoor Police Station, Thrissur (hereafter referred to as the 'first crime'). The prosecution alleges that on 12.01.2022, petitioner had attacked the defacto complainant in front of a temple at Guruvayoor and caused grievous hurt and also stole her mobile phone and thus committed the offences punishable under sections 341, 323, 324, 325, 394 and 201 read with section 34 of the Indian Penal Code.

3. After petitioner was taken into custody on 23.05.2022, he was granted bail on 02.06.2022. One of the conditions imposed by the learned

Magistrate, while granting bail was that petitioner should not involve in any other crime while on bail. Later, petitioner was arrayed as an accused in Crime No.1072/2022 of Thrissur Town West Police Station (hereafter referred to as the 'second crime') alleging offences punishable under sections 294(b), 323, 308, 354 and 354A of the Indian Penal Code, 1860. The allegations in the second crime include displaying his nudity before a lady and brandishing a chopper in an attempt to commit culpable homicide and shouting obscene words on a public road. Petitioner has been granted bail in the second crime also.

4. In the meantime, a petition was filed through the Prosecutor to cancel the bail granted in the first crime due to his involvement in the second crime in violation of the conditions of bail. By the impugned order, the learned Magistrate cancelled the bail due to his involvement in the subsequent crime.

5. Adv. Ramakrishnan M.N. and Adv. Rajith appearing on behalf of the petitioner, contended that the impugned order cancelling bail is erroneous since the learned Magistrate failed to consider the absence of any overwhelming circumstance to cancel the bail, as held in various decisions of the Supreme Court. According to the learned counsel, the second crime was registered without any basis and is an instance of false implication, solely to attempt cancellation of bail granted to the petitioner.

6. Smt.Sreeja V., the learned Public Prosecutor on the other hand

contended that the condition imposed while granting bail that the petitioner shall not involve in any other crime while on bail, ought to be given the sanctity it deserves. It was further argued that if petitioner's involvement in the second crime is ignored, it would pave the way for the condition to become redundant. The learned Public Prosecutor also submitted that the subsequent offence allegedly committed by the petitioner is a serious offence and therefore the accused deserves no leniency.

7. Section 437 of Cr.P.C provides for grant of bail to a person accused of a non-bailable offence when produced before a court other than the High Court or Court of Sessions. The said statutory provision also confers power upon the court to impose conditions. In the exercise of such a power, the learned Magistrate while granting bail imposed a condition that '*petitioner shall not involve in any other crime while on bail*'. It is pertinent to note that final report has been filed in the said case and the case is now pending as C.C. No.1104 of 2022 on the files of the Judicial First Class Magistrate's Court, Chavakkad. Though petitioner was arrested on 07.11.2022 for the second crime, he was granted regular bail for the said crime on 14.12.2022.

8. The bail granted to the petitioner in the first crime was cancelled by the learned Magistrate by the impugned order after coming to the conclusion that the accused had misused his liberty by indulging in another criminal activity and had therefore violated the bail conditions.

9. Bail once granted ought not to be cancelled for the mere asking. There must be cogent and overwhelming circumstances existing to cancel the bail which should not be resorted to in a mechanical manner also. In a recent decision in **P v. Madhya Pradesh and Another** (2022 SCC OnLine SC 552) the Supreme Court considered the circumstances when bail could be cancelled. One of the conditions for cancelling the bail has been succinctly stated to be that if he misuses his liberty by indulging in similar or other criminal activity.

10. Despite the above, is the bail granted to the petitioner liable to be cancelled because later, an FIR is registered against him? In the decision in **Imran v. Muhammed Bhava** [2022 SCC Online SC 496] it has been held that certain supervening circumstances impeding a fair trial must develop after granting bail to an accused for its cancellation. After referring to the above decisions, the Supreme Court in the decision in **P. v. State of Madhya Pradesh** (supra) observed that cancellation of bail already granted would indeed require significant scrutiny.

11. The mere registration of a subsequent crime against the accused by itself cannot result in an automatic cancellation of bail. Registration of a subsequent crime is only an indication of an allegation or a complaint of the accused having been involved in a subsequent crime. The presumption of innocence available to the accused in the second crime, the right to liberty as a fundamental right under Article 21 of the

Constitution of India which envelopes every provision of the Code of Criminal Procedure are factors which cannot be forgotten by the Court when called upon to cancel the bail. The possibility of false accusations being alleged with oblique motives also cannot be ignored. The nature of the subsequent offence and the persons against whom the offence is alleged to have been committed, the stage of the case wherein cancellation is sought are also factors that require appreciation. Apart from the above, while arriving at the conclusion to cancel the bail, the Court must also consider whether the accused had misused the liberty granted in such a manner that it has a tendency to interfere with the due course of the administration of justice. Thus, every case presents a unique situation and close scrutiny ought to be indulged in to identify whether overwhelming circumstances are indeed present in the subsequent crime which necessitates the cancellation of bail earlier granted.

12. As held in **Dolat Ram and Others v. State of Haryana** [(1995) 1 SCC 349] very cogent and overwhelming circumstances are necessary to cancel the bail already granted and that bail once granted should not be cancelled in a mechanical manner without considering whether the supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial.

13. In this context, it is appropriate to refer to two recent decisions of this Court. In **Godson v. State of Kerala** [2022 (2) KLD 447] a learned Single Judge of this Court had observed that a mere violation of the bail conditions is not sufficient to cancel the bail but the satisfaction of the court that it is necessary to do so based on various factors have to be arrived at. However, another learned Single Judge in **Sreeja Mannangath v. State of Kerala** [2022 (7) KLD 109], relying upon the decision in **P. v. State of Madhya Pradesh** (supra), cancelled the bail after observing that the accused had misused his liberty by violating one of the conditions of bail. In **Sreeja's case** (supra), the accused is alleged to have involved in a subsequent crime against the defacto complainant in the earlier crime itself, in violation of the specific condition not to do so. The conclusion arrived at in **Sreeja's case** (supra) is based on the facts therein and cannot apply to the present situation. Further, the decision in **P. v. State of Madhya Pradesh** (supra) does not imply that on violation of any of the conditions of bail, there should be an automatic cancellation. The said decision has not diluted the principles laid down in **Dolat Ram's case** (supra) and on the other hand, specifically observes that there must be a significant scrutiny before bail is cancelled.

14. With the above principles in mind, when the circumstances of the present case are appreciated, it can be noticed that the learned Magistrate had, in exercise of the discretion to grant bail, released the

petitioner on bail even in the second crime. Still, the petitioner has remained in jail for the last more than two months. Though the allegation as regards the second crime is serious, taking into reckoning the contention that the petitioner has been falsely implicated and the absence of any injury on any person and the general allegation that the accused attempted to commit culpable homicide by brandishing a sword in a public road, this Court is of the view that the second crime cannot be treated as overwhelming enough to impede fair trial in the first crime for cancelling the bail already granted. Further, the final report in the crime in which bail was sought to be cancelled was filed much earlier and there is no allegation that the petitioner had misused his liberty against the defacto complainant therein.

15. Thus, despite the registration of the subsequent crime against the petitioner, having regard to the nature of allegations, this Court is of the view that the order cancelling the bail granted to the petitioner ought to be interfered with. Accordingly, the order dated 19.01.2023 in Crl.M.P. No.3394 of 2022 in C.C. No.1104 of 2022 on the files of the Judicial First Class Magistrate's Court, Chavakkad is set aside. The petitioner shall be released from custody forthwith, if not required in any other case.

This Crl.M.C is allowed as above.

Sd/-
BECHU KURIAN THOMAS
JUDGE

vps

APPENDIX OF CRL.MC 854/2023

PETITIONER'S ANNEXURES

- ANNEXURE A1 A TRUE COPY OF CONDITION MEMO IN CRIME NO. 31/2022 OF GURUVAYOOR TEMPLE PS DATED 02.06.2022
- ANNEXURE A2 A TRUE COPY OF THE ORDER OF THE HON'BLE SESSIONS COURT, THRISSUR, GRANTING BAIL TO THE PETITIONER IN CRL.M.C. NO.1575/2022 DATED 14.12.2022
- ANNEXURE A3 A TRUE COPY OF THE PETITON DATED 13.11.2022, AS CRL.MP NO. 3394/2022 BEFORE THE HON'BLE JFCM CHAVAKKAD
- ANNEXURE A4 A TRUE COPY OF THE COUNTER FILED BY THE COUNSEL FOR THE PETITIONER, IN CRL.MP NO. 3394/2022 IN CC NO. 1104/2022, BEFORE THE HON'BLE JFCM CHAVAKKAD DATED 30.11.2022
- ANNEXURE A5 A CERTIFIED COPY OF THE ORDER DATED 19.01.2023 IN CRL.MP NO. 3394/2022 IN CC NO. 1104/2022, OF THE HON'BLE JFCM CHAVAKKAD